**MAINE REVENUE SERVICES 24 STATE HOUSE STATION AUGUSTA, MAINE 04333**

DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
BUREAU OF REVENUE SERVICES, INCOME/ESTATE TAX DIVISION

# Rule No. 806 (18-125 CMR 806)

## NONRESIDENT INDIVIDUAL INCOME TAX

**SUMMARY: Provides income tax guidance for nonresidents of Maine in the following areas: types of income subject to taxation, deduction of losses, apportionment of income to Maine, apportionment of income tax credits, return form to be used, determination of taxable income for spouses filing as single individuals, and determination of tax credits for spouses filing as single individuals.**

### .01 INCOME SUBJECT TO MAINE INCOME TAX:

Income received by nonresidents is taxed only when it is derived from sources within Maine (“Maine-source income”).

When a nonresident earns or derives income from sources both in Maine and elsewhere, only that portion of the income earned or derived within Maine is taxed. The types of deductions and exemptions available to a nonresident are the same as those of a resident.

Nonresident partners of a partnership, members of a limited liability company taxed as a partnership, and shareholders of S Corporations earning Maine-source income are subject to Maine income taxation. Estates of nonresident decedents and nonresident trusts are also subject to tax if Maine-source income has been received.

Maine-source income includes the following types of income:

**A. Compensation for Personal Services.** All compensation received for personal services performed in Maine, regardless of where paid, is Maine-source income. Personal service compensation includes but is not limited to wages, salaries, taxable benefits such as annual and sick leave, commissions, fees, or payment in kind. “Personal services performed in Maine" includes sick time and vacation time earned while working in Maine. In the case of compensation for personal services, the taxpayer must report all Maine-source income even though the taxpayer does not receive the entire amount of such income. For example, amounts withheld by an employer for federal income taxes, FICA contributions, medical insurance plans, or other similar withholding deductions must be included in Maine-source income. Unemployment compensation received by a nonresident that is derived from employment in Maine is Maine-source income.

**Withholding.** Employers who are required to withhold Maine Individual Income Tax from employees must withhold from the earnings of nonresident

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individuals who are present in Maine performing personal services, provided the minimum taxability thresholds contained in 36 M.R.S.A. §5142(8) are exceeded.

**B. Business Income.** All income derived from or effectively connected with the carrying on of a trade or business within Maine is Maine-source income. Generally, a nonresident has a trade or business in Maine if:

> **(1) Permanent Business Presence.** The nonresident, directly or through agents or employees, maintains or operates or shares in maintaining or operating a desk, a room, an office, a shop, a store, a warehouse, a factory, or any other place in Maine where business affairs are systematically and regularly conducted; or
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> **(2) Temporary Business Presence.** The nonresident, directly or through agents or employees, is present for business in Maine on other than a systematic or regular basis and earns or derives gross income during the taxable year from contractual or sales related activities.

**C. Income from Ownership of Any Interest in Real or Tangible Personal Property.** All income derived from the ownership of any interest in real or tangible personal property located in Maine is Maine-source income. This includes but is not limited to rents derived from and gains from the sale or exchange of:

> (1) real property located in Maine;
> (2) tangible personal property having a situs in Maine;
> (3) any interest in a Maine time-share or similar arrangement.

**Example 1:** A Vermont resident owns real estate located in Maine that is sold at a gain. The Vermont resident will be subject to Maine income tax on the net gain derived from the sale.

**Example 2:** A New York resident receiving rental income from real estate located in Maine will be subject to Maine income tax on the net rental income.

**Example 3:** A Connecticut resident owns real estate located in Maine. She sells the property for a gain and retains a note from the buyer for 80 percent of the purchase price. Under the note, the buyer will pay principal and interest in installments over the next five years. If the nonresident recognizes installment transaction treatment, the gain will be subject to Maine income tax for each year the gain is recognized. The interest will not be subject to Maine income tax.

**D. Lottery Winnings.** Winnings received by a nonresident from the Maine Lottery or the Tri-State Lotto (Maine, New Hampshire, Vermont) is Maine-source income if the winning ticket was purchased in Maine on or after July 13, 1993.

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**E. Minimum Taxability Thresholds.** Notwithstanding the provisions of Section .01(A) and Section .01(B)(2) above, a nonresident has Maine-source income subject to taxation only if:

(1) The nonresident individual is present in Maine performing personal services for more than 20 days during the taxable year and directly earns or derives more than $6,000 in gross income during the taxable year in Maine from all sources;

(2) The nonresident individual has income described in section .01(B)(1) from a permanent business presence in Maine; or

(3) The nonresident individual has business income described in section .01(B)(2) from a temporary business presence in Maine in excess of $6,000 of gross income during the taxable year from contractual or sales-related activities.

See 36 M.R.S.A., §5142(8).

**.02 INCOME NOT SUBJECT TO MAINE INCOME TAX:**

The following types of income earned or derived by nonresidents are not subject to Maine income tax:

**A.** Compensation paid by the United States of America to its uniformed military personnel for services rendered on active duty, including members of the Army, Navy, Air Force, Coast Guard and Marines who are assigned to a military air base, naval station, or any facility, public or private, in Maine, to which they must report under service orders;

**B.** Income from annuities, interest, dividends, copyrights, patents, and gains from the sale or exchange of intangibles, when not related to a trade, business, profession or occupation carried on in Maine;

**C.** Earnings paid to nonresident interstate railroad and motor carrier employees who perform services for their employer in more than one state; and

**D.** Retirement income, including pensions and deferred compensation, received after termination of employment that is exempt from state income taxes under United States law regarding limitation on state income taxation of certain pension income (4 U.S.C.A. §114).

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**.03 DEDUCTION OF LOSSES:**

A loss that is deducted in computing the nonresident taxpayer's federal adjusted gross income is automatically included in that taxpayer's Maine adjusted gross income for the same tax year. If the loss is a "Maine-source loss," it is deductible in computing income from Maine sources on Schedule NR or Schedule NRH.

**A. Net Operating Loss.** A net operating loss that is derived from or effectively connected with the carrying on of a trade or business in Maine is a Maine-source loss.

**B. Capital Loss.** A capital loss that is derived from the ownership or disposition of any interest in real or tangible personal property located in Maine is a Maine-source loss.

**C. Rental Loss.** A rental loss derived from property located in Maine is a Maine-source loss.

**D. Carryback or carryforward.** Since Maine adjusted gross income is derived from federal adjusted gross income and the federal code provides for the carry back or carry forward of losses, a taxpayer may carry back or carry forward a loss on the Maine return only if that loss is carried back or forward on that taxpayer's federal return for the same tax year. If the only Maine-source items in federal adjusted gross income are losses and those Maine losses are fully absorbed by income derived from sources outside of Maine, the Maine losses cannot be carried back or carried forward for Maine purposes. Since there is no Maine-source income, the result is that there is no tax benefit at the state level for the losses.

**E. Negative or Zero Federal Adjusted Gross Income.** If the nonresident taxpayer's federal adjusted gross income is negative or zero for the taxable year and the taxpayer has recognized Maine-source income, there will be no Maine tax on that income.

**.04 RULES FOR APPORTIONMENT OF INCOME (LOSS) TO MAINE:**

When a nonresident earns or derives income (loss) from sources both within Maine and elsewhere, an apportionment of income (loss) must be made to determine the amount of Maine-source income (loss). The following apportionment provisions set out the rules for the determination of a nonresident's Maine-source income (loss). Any nonresident may submit an alternative basis of apportionment with respect to his or her own income (loss) and explain that basis in full on the return, subject to review and modification by the State Tax Assessor.

**A. Employees Compensated on an Hourly, Daily, Weekly or Monthly Basis.** When a nonresident employee is able to establish the exact amount of pay received for services performed in Maine, that amount is the amount of Maine-source income. When no such exact determination of amounts earned or derived in Maine is possible, the income must be apportioned to Maine. Multiply the gross income wherever earned (determined as if the nonresident were a resident) by a fraction, the numerator of which is the number of days spent working in Maine and the denominator of which is the total working days. The result is the amount of the nonresident's Maine-source income. When computing total working days, do not include days in which the employee was not at work, such as holidays, sick days, vacations, and paid or unpaid leave.

**Example:** An employee's work year totals 260 days (52 weeks of 5 days). The employee was absent from the job for 20 days during the year; 10 vacation days, 9 holidays, 1 sick day. This employee has a total of 240 working days.

When a working day is spent working partly in Maine and partly elsewhere, it will be treated as one-half day spent working in Maine.

**Example:** An auditor who lives in Portsmouth, New Hampshire is employed by an accounting firm in Portland at an annual salary of $33,000. He works a total of 240 days in the tax year. He performs field audits in Rhode Island and Connecticut on 160 days of the year and works 80 days in Maine. His Maine-source income is $11,000, calculated on the following basis:

$$\$33{,}000 \times \frac{80}{240} = \$11{,}000$$

**B. Salespersons.** The Maine-source income of a salesperson or other employee whose compensation is based in whole or in part upon commissions is computed as follows: Multiply the gross income earned from sales everywhere (determined as if the nonresident were a resident) by a fraction, the numerator being the amount of sales made within Maine and the denominator being the amount of sales everywhere. For the purposes of this apportionment, "amount of sales" is determined on the same basis as that on which the amount of sales is determined for purposes of figuring the employee's commissions.

The determination of whether sales are made within Maine or elsewhere is based upon where the salesperson performs the activities in obtaining the order, not the location of the formal acceptance of the contract.

**C. Self-Employed Nonresidents Carrying on a Trade or Business in Maine and Elsewhere.**

A self-employed nonresident carrying on a trade or business both within Maine and elsewhere must apportion the income (loss) therefrom to determine the amount of Maine-source income (loss). All income (loss) shall be apportioned to Maine in accordance with 36 M.R.S.A. §5211.

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**D. Professional Athletes.**

(**1) Exhibition and Regular Season Games.** Nonresident professional athletes must include in income the entire amount of compensation received for games-played in Maine. In the case of a nonresident athlete not paid specifically for the game played in Maine, the following apportionment formula must be used: The income earned and subject to the Maine income tax is the total compensation earned during the taxable year, including incentive payments, bonuses, and extras, but excluding signing bonuses and league playoff money. Multiply the total income by a fraction, the numerator of which is the number of exhibition and regular season games the athlete played (or was available to play for the athlete's team, as, for example, with substitutes) in Maine during the taxable year, and the denominator of which is the total number of exhibition and regular season games which the athlete was obligated to play under contract or otherwise during the taxable year, including games in which the athlete was excused from playing because of injury or illness.

**(2) Playoff Games.** For those playoff games played in Maine, the amount of league playoff money earned by the professional athlete for playing or being available to play in such games is also income subject to apportionment under the following formula: League playoff money earned and subject to the Maine income tax is the total league playoff compensation earned during the taxable year multiplied by a fraction, the numerator of which is the number of playoff games the athlete played or was available to play in Maine during the taxable year, and the denominator of which is the total number of playoff games which the athlete's team played during the taxable year, including playoff games in which the athlete was excused from playing because of injury or illness.

**(3) Signing Bonuses.** Any amount received by a nonresident professional athlete as a signing bonus is excluded from the income subject to Maine apportionment.

**E. Entertainers.** The Maine-source entertainment income of nonresident entertainers is the entire amount received for performances, engagements or events that occurred in Maine. In the case of a nonresident entertainer who is not paid specifically for a performance in Maine, the following apportionment formula must be used: The income earned and subject to the Maine income tax is the total annual compensation multiplied by a fraction, the numerator of which is the number of performances the entertainer performed (or was available to perform, as, for example, with understudies) in Maine, and the denominator of

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which is the total number of performances which the entertainer was obligated to perform under contract or otherwise during the taxable year.

**Example 1:** A nonresident entertainer performs for three evenings at Portland Civic Center and earns $100,000. The entire $100,000 is income subject to Maine income tax.

**Example 2:** A nonresident professional dancer earns an annual salary of $50,000. She dances in all 40 of her dance company's performances during the tax year, 20 of which took place in Maine. The income subject to tax in Maine is $25,000, calculated by multiplying $50,000 by 20/40.

### .05 INCOME TAX CREDITS:

All income tax credits that are available to the resident individual are also available to the nonresident individual. Personal income tax credits, such as the credit for child care expenses (36 M.R.S.A. §5218) and the retirement and disability credit (36 M.R.S.A. §5219-A) must be prorated based upon the ratio of the taxpayer's Maine-source income to entire federal adjusted gross income as modified by 36 M.R.S.A. §5122. The total amount of income tax credits based upon a business being operated in Maine by the nonresident taxpayer (business credits) may be claimed without prorating subject to the limitations contained in the statute for the credit or credits involved. (See 36 M.R.S.A., Chapter 822.)

### .06 RETURN OF NONRESIDENT OR PART-YEAR RESIDENT INDIVIDUAL:

A nonresident or part-year resident individual shall file the Maine resident long form supplemented by Schedule NR. Schedule NR is used to separate Maine-source income (loss) from non-Maine source income (loss) and to compute the nonresident credit. A copy of the federal income tax return (Form 1040) and Schedule A (if itemized deductions are claimed on the Maine return) must be attached. The taxpayer shall submit a copy of any other federal forms or schedules which the State Tax Assessor deems necessary to determine Maine-source income.

### .07 MAINE TAXABLE INCOME COMPUTATION FOR SPOUSES FILING AS SINGLE INDIVIDUALS PURSUANT TO 36 M.R.S.A. §5221(2):

A married nonresident or part-year resident individual who files as a single individual must file the Maine resident long form supplemented by Schedule NRH. In completing Schedule NRH, the following methods are used to calculate the filing spouse's share of the married-joint income, deductions, etc., to separate Maine-source income (loss) from non-Maine source income (loss) and to compute the nonresident credit:

**A. Individual's Income Share:** The individual's share of the total income from the married joint federal return shall be 50% of that total income, except that earned income shall be directly attributed to the appropriate spouse whenever possible. Income arising from wages, salaries, tips, other items of value received from an employer for services performed or from self-employment shall be totally attributed to the spouse so compensated. If separate accounting has been maintained so that income, expense and deductions can be separately determined and substantiated, the individual filing may report as if a separate federal return had been filed.

**B. Income Ratio:** The ratio of the electing individual's share of total income is computed by dividing the individual's income share as determined in paragraph (A) by the total income reported on the federal married joint return.

**C. Adjustments to Income:** Adjustments to income appearing on the federal married joint return for Maine purposes shall be the actual distribution of adjustments, if supported by adequate records. Otherwise, apportion adjustments according to the income ratio.

**D. Federal Adjusted Gross Income:** The filing individual's adjustments to income as determined in paragraph (C) shall be deducted from his or her income share (paragraph (A)) to determine the individual's federal adjusted gross income.

**E. Maine Adjusted Gross Income:** Maine adjustments to Federal adjusted gross income to arrive at Maine adjusted gross income shall be determined by adding 50% of any joint income which is taxable by Maine but not at the federal level and by deducting income which is taxable at the federal level but not by Maine in the same amount as it is included under paragraph (A).

**F. Maine Deductions:** The individual shall elect either the Maine standard deduction for single individuals or the amount of federal itemized deductions less applicable modifications from the federal married joint return multiplied by the electing individual's income ratio (as defined in paragraph (B)).

**G. Maine Exemptions:** The filing individual is entitled to his or her exemption as authorized by §5126 plus the number of dependent exemptions from the federal married joint return multiplied by the electing individual's income ratio (as defined in paragraph (B)). No amount may be claimed for the other spouse's personal exemption.

**.08 MAINE TAX ADDITIONS AND TAX CREDITS FOR SPOUSES FILING AS SINGLE INDIVIDUALS PURSUANT TO 36 M.R.S.A. §5221(2):**

Maine tax additions and Maine tax credits available if a joint return were filed shall be multiplied by the electing individual's ratio of Maine adjusted gross income to the Maine adjusted gross income of the joint return. If separate accounting has been maintained so that tax additions and tax credits can be separately determined and substantiated, the individual filing may report as if a separate federal return had been filed.

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